



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL (MURDER) CASE NO.40 OF 2013

REPUBLICPROSECUTOR

VERSUS

1. DAVID MANOAH OLANDO)
2. ISAAC MANOAH)
3. GODRINE MATERE)
4. TOM WANYONYI MANONI (DECEASED))::: ACCUSED
5. TIMOTHY MAKOKHA)
6. HEZRON MUKWAMI LUCHEVELELI)
7. ENOCK JEREMIAH ASHIKHANGA)

RULING

1. The six living accused persons, together with their deceased colleague, Tom Wanyonyi Manoni were arraigned before this Court on one count of Murder c/c 203 as read with Section 204 of the Penal Code. The particulars thereof being that on the 13th August 2013 at Buchesani village, Shingoto sub location, Shibuye location of Kakamega East District within Kakamega County, unlawfully murdered JAPHETCH MUCHESIA ASHIKHANGA. They all denied committing the offence and the case has been ongoing since they took plea on 9th September 2013.
2. The Prosecution called the following Prosecution witnesses in support of their allegations against the accused persons: Emily Ambayi Mukanda, as PW1, Francis Muhalia Ihumba as PW2, while Synos Matingoye Masheti testified as PW3. The other witnesses were Damaris Shisia Muwanya who testified as PW4, Joseph Muwanga as PW5 WHILE Dr. Dickson Mchana testified as PW6. Dr. Mchana testified that on examination of the deceased's body he found the clothes torn and blood stained. He also found that the deceased had 4 deep cut wounds on the left chest and other cut wounds on the collar bone. The 1st and 2nd ribs on the left side were also broken. Dr. Mchana also testified that the deceased had a deep cut on the back of the neck which cut ran across the neck.
3. Dr. Mchana also told the Court that internally, the deceased's lungs were cut twice on the left side with bleeding in the chest. The iota artery was cut and the left upper chamber of the heart was also cut. The first neck bone was cut into two. Dr. Mchana formed the opinion that the cause of

death was multiple cut wounds caused by a sharp object/trauma following assault. The Post Mortem report was produced as PExhibit 1.

4. The last Prosecution witness was number 38937 Inspector of Police, Peter Momanyi who was, at the time of the alleged offence stationed at the CID office, Kakamega. He was the Investigating Officer in this case. He testified that the deceased's body had deep cuts on the face, neck and shoulder.
5. At the close of the Prosecution case, Mr. Ondieki, Counsel for the accused persons submitted through his R3 written submissions dated 24/9/2014 and filed in court on the same day that the prosecution had not established a prima case against any of the accused persons to warrant their being put on their defence. He submitted that none of the 7 witnesses linked any of the accused persons to the offence, either directly or circumstantially. He urged the court to acquit all the accused person at this stage.

Mr. Oroni, prosecution counsel, did not make any submissions on the issue⁴ raised by counsel for the accused persons.

I have now carefully read through the testimonies of each of the 7 prosecution witnesses and I am satisfied that the prosecution has established a prima facie case against all the accused persons herein requiring them to be put on their defence. I therefore proceed to put each of the 6 accused persons on their defence.

In defending themselves, each accused is at liberty to give either sworn or unsworn evidence. They also have a right not to say anything since the onus of proof in criminal cases falls equally on the shoulders of the prosecution. If any of the accused persons decides to remain silent, the court will proceed to decide the case on the strength of the evidence that is before it. On the other hand, R4 whoever chooses to give sworn evidence will be subjected to cross examination by the prosecution. Those who choose to give unsworn testimonies will not be asked any questions by the prosecution. In each case, the accused persons have the right to call witnesses.

The accused persons may now, either individually or through their advocate indicate to the court how they intend to defend themselves.

Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 22nd day of July 2015.

RUTH N. SITATI.

JUDGE.

In the presence of

Mr. Omwenga..... For the State.

Mr. I. Ondieki (present)..... For all accused persons.

Mr. Lagat..... Court Assistant.